

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT**

DANIEL PLOURDE, MARGARET	:	
PLOURDE, DANIEL and MARGARET	:	
PLOURDE as parents and next	:	
best friends of their minor	:	
son ANDRE PLOURDE; and DANIEL	:	
and MARGARET PLOURDE as parents	:	
and next best friends of their	:	
minor daughter DANIELE PLOURDE	:	
	:	
v.	:	Docket No. 1:00-CV-194
	:	
WALTER GLADSTONE, CRAIG W.	:	
TRISCHMAN and TWIN STATE	:	
FERTILIZER, INC.	:	

RULING ON PLAINTIFFS' MOTION FOR  
REVIEW OF CLERK'S AMENDED TAXATION OF COSTS  
(Paper 172)

Pursuant to Rule 54(d)(1), Plaintiffs have filed this Motion for Review of Clerk's Taxation of Costs. See FED. R. CIV. P. 54(d)(1). The Court construes this as a motion to review the Amended Taxation of Costs (Paper 171) filed on September 22, 2003. For reasons discussed below, the Clerk's taxation of costs is ACCEPTED in part and REJECTED in part.

DISCUSSION

Rule 54(d) provides that "costs other than attorney's fees shall be allowed as of course to the prevailing party unless the court otherwise directs." FED. R. CIV. P. 54(d)(1). The Supreme Court has determined that 28 U.S.C.

§ 1920 defines the term "costs" as it is used in Rule 54(d). Crawford Fitting Co. v. J.T. Gibson, Inc., 482 U.S. 437, 441 (1987). The costs allowed by § 1920 include:

1. Fees of the clerk and marshal;
2. Fees of court reporter and for transcripts necessarily obtained for use in the case;
3. Fees for printing and witnesses;
4. Fees for copies of papers necessarily obtained for use in the case;
5. Docket fees;
6. Compensation of court-appointed experts and interpreters.

See 28 U.S.C. § 1920 (2003). The Supreme Court has also noted that the discretion given to district judges to tax costs should be sparingly exercised with reference to expenses not specifically allowed by the statute. Farmer v. Arabian American Oil Co., 379 U.S. 227, 235 (1964). The review of the clerk's assessment of costs is "a *de novo* determination addressed to the sound discretion of the court." Id. at 233. In making a *de novo* determination, the Court reviews each of the objections raised by Plaintiffs.

First, Plaintiffs object to the costs for deposition transcripts, arguing that they are not listed in § 1920, and that therefore Defendants must demonstrate entitlement to these costs. (Paper 172, ¶ 2.) This argument is without merit. Under § 1920, a judge or clerk may tax the cost of

fees "for all or any part of the stenographic transcript necessarily obtained for use in the case." See § 1920(2). Courts within the Second Circuit have interpreted this language to allow for the taxation of the cost of deposition transcripts. See, e.g., Cooke v. Universal Pictures Co., 135 F. Supp. 480 (S.D.N.Y. 1955) (holding that deposition transcripts are considered part of the "stenographic transcript," the cost of which is explicitly taxable under § 1920). Thus, the costs of deposition transcripts are within § 1920, and Defendants are entitled to these costs since they were necessarily obtained for use in the case.

Next, Plaintiffs object to the costs of deposition transcripts and interview transcriptions that Defendant did not use in the dispositive summary judgment motions. (Paper 172, ¶ 3.) This argument is also without merit. The Clerk correctly explains that for those depositions not referenced in the summary judgment motion, the taxation standard generally relied upon is not whether the deposition plays a dispositive role in the outcome of a proceeding but rather whether the deposition reasonably seemed necessary at the time it was taken. See Allison v. Bank One-Denver, 289 F.3d 1223, 1249 (10th Cir. 2002); Shannon v. Firemen's Fund Ins. Co., 156 F. Supp. 2d 279, 304 (S.D.N.Y. 2001). Seven of the deposition transcripts Plaintiffs object to were for depositions

Plaintiff noticed, and four others were for depositions of Plaintiffs' expert witnesses. (Paper 177, p. 1.) Moreover, Defendants point out that the Plaintiffs' Complaint asserted eleven causes of action, alleging millions of dollars in damages. (Id. at p. 2.) Examined in this context, the Court agrees that these depositions reasonably seemed necessary when taken, and consequently the costs are taxable.

Lastly, Plaintiffs object to the taxation of the cost of two copies of each deposition, "scrunch", and electronic copies of depositions. (Paper 172, ¶ 4.) As to the cost of two copies for each deposition, Plaintiffs offer no authority that Defendants were required to share copies of deposition transcripts. This is not the rule, particularly in a situation such as this in which defendants are represented by different counsel. See Wolf v. Burum, 1990 WL 129463 (D. Kan. 1990) (holding that defendants represented by different counsel need not share transcripts and taxation of cost of multiple copies allowed).

The Court, however, agrees with Plaintiffs' objection to the taxation of costs for "scrunch" copies and electronic copies of depositions. These items were taxed by the Clerk as "various supplemental deposition components," which included: the electronic transcripts, ASCII diskettes, "scrunch" copies, and key-word indices. (Paper 171, p. 7-8.) The Clerk

reasoned that such costs should be taxed because they constitute “‘standard business practice,’ especially when taken in light of today’s technologically-advanced society.” (Id. at 7.)

Courts, however, have not been magnanimous to deposition costs derived from new technology, particularly when the product is duplicative and a mere convenience. See Scallet v. Rosenblum, 176 F.R.D. 522 (W.D. Va. 1997). The district court in Scallet held that the cost of a disk copy was not taxable, reasoning that a disk copy is much like a litigation support system: it functions to facilitate information retrieval. Id. at 527.

In this case, the disk copies, scrunch copies, and keyword indices are duplicative and serve as a convenience to the attorneys as a means of information retrieval. As such, these costs are not “necessarily obtained for use in the case” and thus not taxable. Accord, Jones v. Unisys Corp., 54 F.3d 624 (10th Cir. 1995) (affirming district court’s refusal to tax cost of disk copies of deposition transcripts); Uniroyal Goodrich Tire Co v. Mutual Trading Corp., 1994 WL 605719 (N.D. Ill. 1994) (declining to tax the cost of diskette copies of transcripts because they were merely for the attorney’s convenience); Intermedics, Inc. v. Ventritex, Inc., 1993 WL 515879 (N.D. Cal. 1993) (holding that parties’ election to have

additional transcript produced in separate medium, like diskette, does not result in taxable cost). Accordingly, the "supplemental deposition components" listed by the Clerk are not taxable.

#### CONCLUSION

The Clerk's Amended Taxation of Costs is hereby ACCEPTED in Part and REJECTED in part. The Clerk's Amended Taxation of Costs shall be further amended to subtract the costs of the electronic transcripts, ASCII diskettes, "scrunch copies" and key-word indices. This matter is returned to the Clerk to further amend his Taxation of Costs in accordance with this Ruling.

SO ORDERED.

Dated at Brattleboro, Vermont this \_\_\_\_ day of October, 2003.

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J. Garvan Murtha, U.S. District Judge